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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Rules and Policies on Foreign Participation)
in the U.S. Telecommunications Market)

IB Docket No. 97-142

To: The Commission

COMMENTS ON ORDER AND NOTICE OF PROPOSED RULEMAKING

TELECOM FINLAND, LTD.

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To: The Commission

Telecom Finland has filed a petition for a declaratory ruling under Section 310(b)(4) of the Communications Act of 1934 seeking a determination that its ownership of U.S. subsidiaries holding LMDS and PCS licenses would serve the public interest. *Public Notice, Telecom Finland Seeks Declaratory Ruling Under Section 310(b)(4) to Permit Indirect Ownership of LMDS and PCS Licenses*, DA 97-1330 (released June 27, 1997). This action follows guidance recently offered by the Commission for entities seeking a waiver of the foreign

Section 310(b)(4) of the Communications Act permits the Commission to deny or revoke a common carrier license if more than 25 percent of the applicant or licensee is foreign owned and such denial would serve the public interest.² In 1995, the Federal Communications Commission ("FCC" or "Commission") adopted an order detailing the rules for foreign entities wishing to enter the U.S. telecommunications market.³ The *Foreign Carrier Entry Order* established an effective competitive opportunities test ("ECO Test") to determine whether indirect foreign ownership of common carrier radio licenses up to 100 percent is in the public interest.

On February 15, 1997, the United States and 68 other countries entered into an agreement ("WTO Basic Telecom Agreement") to open their markets for basic telecommunications services.⁴ This commitment will ensure that the majority of the world's trading nations adopt pro-competitive regulations and eliminate the monopoly provision of basic telecommunications services.⁵ As a result of the changes produced by the WTO Basic Telecom Agreement, the Commission seeks comment on a new policy of open entry for foreign-affiliated carriers.

ownership rules under section 310(b)(4). See *Public Notice, International Bureau Responds to Omnipoint's Request for Ruling to Permit Increased Foreign Ownership in PCS Licensees From Investors in WTO Member Countries*, (released June 25, 1997). Although this proceeding directly relates to Telecom Finland's pending request, Telecom Finland assumes that by following the Commission's recommended procedures the Commission will act on Telecom Finland's petition expeditiously and not wait for the adoption of rules from this rulemaking.

² 47 U.S.C. § 310(b)(4).

³ Market Entry and Regulation of Foreign-Affiliated Entities, *Report and Order*, 11 FCC Rcd 3873 (1995), *recon. pending*, (hereinafter "*Foreign Carrier Entry Order*").

⁴ In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Order and Notice of Proposed Rulemaking*, IB Docket No. 97-142, FCC 97-195 ¶1 (released June 4, 1997) (hereinafter "*NPRM*").

⁵ *Id.* at ¶2

The open entry policy would permit foreign investors from WTO Member countries to own indirectly up to 100 percent of common carrier radio licenses, unless the Commission finds compelling evidence that such ownership would not serve the public interest.⁶ As set forth below, Telecom Finland, Ltd. supports the Commission's proposed changes and believes they would foster competition in the U.S. telecommunications market and the telecommunications markets of other WTO Member countries.

II. AN OPEN ENTRY POLICY WOULD SERVE THE PUBLIC INTEREST

Section 310(b)(4) of the Communications Act grants the Commission the authority to deny or revoke a common carrier license if greater than 25 percent of the applicant or licensee is indirectly foreign owned. In its *Foreign Carrier Entry Order*, the Commission adopted the ECO Test to determine whether allowing an individual foreign carrier to own indirectly more than 25 percent of an applicant or licensee would serve the public interest. Under the ECO Test, the Commission evaluates the legal restrictions on the ability of U.S. carriers to enter a foreign market and then assesses their practical ability to enter a foreign market, including: (1) the terms and conditions of interconnection, (2) competitive safeguards, and (3) the regulatory framework of the foreign country.⁷

The Commission now proposes to eliminate the ECO Test for licensees or applicants with foreign investment from WTO Member countries, while retaining the ability to deny applications it believes would not serve the public interest.⁸ The proposed changes would apply only to WTO

⁶ *Id.* at ¶¶5, 67-76.

⁷ *Foreign Carrier Entry Order* at ¶¶ 47-55; 179-89.

⁸ *NPRM* at ¶ 68.

Member countries and would not cover broadcast licenses.⁹ The Commission believes that the WTO Basic Telecommunications Agreement substantially accomplishes its stated goal of opening foreign markets to U.S. companies providing common carrier services.¹⁰ Furthermore, if an applicant's foreign investor has its home market in a WTO Member country, there would be a "strong presumption" in favor of granting the application.¹¹ The Commission would weigh this presumption against public interest concerns raised by the Executive Branch including those in the areas of national security, law enforcement, foreign policy or trade.¹² The Commission does "not anticipate that we [Commission] would be easily persuaded that the public interest would be served by denying a license based on Section 310(b)(4) concerns, absent serious concerns raised by the Executive Branch."¹³

The Commission would deny applications with foreign investment from a WTO Member country only if such applications posed a "very high risk" to competition in the U.S. telecommunications market.¹⁴ However, the proposed rules would shift the burden from requiring the applicant to demonstrate that granting its license application would serve the public interest as required under the ECO Test, to requiring a third party to show that granting the application would not be in the public interest.¹⁵

⁹ *Id.* at ¶ 69, 71.

¹⁰ *Id.* at ¶ 73.

¹¹ *Id.* at ¶ 74.

¹² *Id.*

¹³ *Id.* at ¶ 75.

¹⁴ *Id.* Specifically, the Commission appears to be concerned that an entity might exert enough market power to threaten competition in the U.S. telecommunications market.

¹⁵ *Id.*

Telecom Finland strongly supports these proposed rule changes. Telecom Finland agrees with the Commission that the ECO Test is no longer needed because the WTO Basic Telecom Agreement will ensure that the telecommunications markets of WTO Member countries are open and promote competition. In such an environment, Telecom Finland agrees that there should be a strong presumption that granting licenses to applicants backed indirectly by investors from WTO Member countries would serve the public interest. This result is further supported by the fact that U.S. companies will be able to invest freely in WTO Member countries' telecommunications markets on the same terms as the proposed rules permit WTO Member countries' investors to invest in the U.S.

The Commission retains safeguards such as consideration of Executive Branch concerns in the areas of national security, law enforcement, foreign policy and trade. Furthermore, the Commission may deny an application if a third party can show that the application poses a great risk to competition in the U.S. Telecom Finland believes these measures adequately protect the public interest, while opening markets up to competition in the provision of telecommunications services in the U.S. and abroad.

For these reasons, Telecom Finland believes that the Commission should view favorably all levels of indirect foreign investment in U.S. companies by entities from WTO Member countries. The Commission should not review an increase in ownership in a licensee that already has more than 25 percent foreign ownership or additional investments that do not effect a transfer of control to an investing entity from a WTO Member country. Moreover, even investments that produce a transfer of control to an entity from a WTO Member country should be reviewed with a presumption that they serve the public interest.

The Commission should consider the extent of a WTO Member country's commitment, or its implementation of its commitment, in evaluating whether the application of an investor from that country causes competition problems in the U.S. telecommunications market. Not only must the investor's country have been a signatory to the WTO Basic Telecom Agreement, but it must satisfy completely the terms of that agreement. A hollow or unfulfilled commitment is no better than no commitment at all. Prior to signing the WTO Basic Telecom Agreement, numerous WTO Member countries, including Finland, opened their telecommunications market to domestic and foreign competition on a level that exceeds the openness of the U.S. telecommunications market.¹⁶ The Commission should have few concerns regarding the level of competition in these countries' domestic telecommunications markets.

¹⁶ For example, Finland does not currently impose any legal restrictions on U.S. or other foreign entities entering the Finnish telecommunications market. In addition, in October 1992, the Finnish government passed legislation permitting foreign direct investment in telecommunications enterprises. A foreign company can now own 100 percent of a Finnish telecommunications company and may apply for an operating license in the rare cases in which licenses are still required. Beginning on July 1, 1994, Finland introduced full competition for international and domestic long distance service. In 1997, Finland adopted the Telecommunications Market Act ("TMA") which abolished license requirements, except where an entity seeks to construct its own mobile telephone network, and required companies with their own networks to provide network access to companies without their own networks. The TMA also allows the market to set prices for services and permits the Ministry of Transport and Communications ("MTC"), which regulates telecommunications services in Finland, to establish limited regulations on pricing only if (a) individual telecommunications companies exercise sufficient market power to hinder competition or (b) the European Community requires the regulations. In early 1995, Finland joined the European Union. Finland has modified its domestic legislation to comply with existing European Union directives and has opened up its telecommunications market ahead of the timeline established by the European Union.

Numerous U.S. companies have entered the Finnish telecommunications market. U.S. companies have a ten percent share of all telecommunications equipment imported into Finland and several major U.S. companies including AT&T, Digital Equipment Corporation, and IBM have subsidiaries operating in Finland. Telecom Finland and Infonet Services Corporation of the U.S. have established a company, Oy Infonet Finland, Ltd., to sell communications services. AT&T Global Information Solutions ("AT&T Global"), a subsidiary of AT&T located in Helsinki, constructed one of Europe's first wireless network systems in Finland. AT&T Global operates the network and sells directly to local distributors in Finland. The Helsinki Telephone Company ("HTC") and Sprint International ("Sprint") have entered into an agreement to sell international data transmission services in which HTC may operate and resell SprintNet global value added network services in Finland. Deutsche Telecom, France Telecom, and Sprint have entered into a joint venture, Global One, which offers a wide range of telecommunications services in Finland. Global One has a license to construct voice telephony networks for local, long distance, and international services in Finland and has notified the Finnish government of its intention to provide fixed data transmission services, thus satisfying all requirements to

Finally, Telecom Finland agrees that the Commission should continue to determine a foreign investor's home market by applying the "principal place of business" test set forth in the *Foreign Carrier Entry Order*. Through evaluation of the five factors of this test, the Commission may accurately determine the home market of a foreign investor.

provide telecommunications service in Finland. RSL-Com Finland Oy ("RSL") is a subsidiary of RSL Communications, Ltd., a U.S.-based telecommunications company formed in 1994 as a global telecommunications company focusing on international traffic, operating in Finland. RSL has a license to construct voice telephony networks for local, long-distance, and international services and has notified the Finnish government of its intention to provide fixed data transmission services, thus satisfying all requirements to provide telecommunications services in Finland. As these examples illustrate, U.S. companies currently have a substantial presence in the Finnish telecommunications market.

In addition, foreign companies have entered the Finnish telecommunications market and provide services to Finnish businesses and consumers. PTT Telecom of the Netherlands, Telia of Sweden, and Swiss Telecom PTT have entered into a Partnership, Unisource, to provide telecommunications services in Finland. Unisource has notified the Finnish government that intends to provide telephone and mobile network service in Finland. Telia, the Swedish national telecommunications company, purchased Telivo, a Finnish telecommunications company which holds a Finnish DCS license. Tele Danmark, the Norwegian company Telenor and British Telecom ("BT") have formed a partnership, Telenordia, which markets services for Concert, a joint venture between BT and MCI.

III. CONCLUSION

For the foregoing reasons, Telecom Finland supports the Commission's proposed open entry policy which would presume that foreign investors from WTO Member countries could invest in U.S. entities, unless it could be shown that such investment would threaten competition in the U.S. telecommunications market. Telecom Finland urges the Commission to adopt its proposed rules expeditiously.

Respectfully submitted,

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Dated: July 8, 1997

CERTIFICATE OF SERVICE

I, Andrew R. Edwards, a paralegal in the law firm of Patton Boggs, L.L.P., do hereby certify that a copy of the foregoing "**COMMENTS ON ORDER AND NOTICE OF PROPOSED RULEMAKING**" has been sent via hand delivery, this 9th day of July, 1997 to the following:

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